

**MINUTES
of the
SECOND MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**July 15-17, 2013
Pueblo of Isleta
Pueblo of Santa Ana
Pueblo of Santo Domingo**

The second meeting of the Indian Affairs Committee (IAC) was called to order by Representative Sandra D. Jeff, co-chair, on July 15, 2013 at the Pueblo of Isleta, Isleta Resort and Casino (Hotel), Grand Ballroom C.

Present

Rep. Sandra D. Jeff, Co-Chair
Sen. John Pinto, Co-Chair
Rep. Eliseo Lee Alcon (July 15-16)
Rep. Alonzo Baldonado
Rep. Sharon Clahchischilliage
Rep. Patricia A. Lundstrom (July 15)
Rep. James Roger Madalena
Sen. Richard C. Martinez (July 15-16)
Rep. Jane E. Powdrell-Culbert
Sen. Nancy Rodriguez
Sen. Benny Shendo, Jr. (July 15-16)

Absent

Sen. Cliff R. Pirtle
Sen. John C. Ryan
Sen. William P. Soules

Advisory Members

Rep. Ernest H. Chavez
Rep. Zachary J. Cook (July 15)
Rep. Tim D. Lewis (July 16)
Rep. Georgene Louis
Rep. Debbie A. Rodella
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar (July 15-16)

Sen. Carlos R. Cisneros
Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Antonio "Moe" Maestas
Sen. Clemente Sanchez

(Attendance dates are noted for members who did not attend the entire meeting.)

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Monica Ewing, Staff Attorney, LCS
Branden M. Ibarra, Graduate Student Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, July 15**Invocation, Welcome and Introductions**

Representative Jeff welcomed the committee and members of the audience and asked everyone to introduce themselves. Governor E. Paul Torres of the Pueblo of Isleta delivered an invocation.

Pueblo of Isleta: Programs, Projects and Priorities

Governor Torres greeted the committee and mentioned some of the main concerns, programs, projects and priorities facing the Pueblo of Isleta and its members. Governor Torres introduced Steve Abeita, resource division manager of the pueblo. Mr. Abeita discussed the duties of his department: transportation, natural resources, utilities, environment, community development, surveying and mapping.

Mr. Abeita's presentation focused on the priorities of the pueblo: an assisted living project for an estimated cost of \$700,000; reconstruction of an infrastructure project for an estimated cost of \$250,000; and a water treatment facility for an estimated cost of \$150,000. Mr. Abeita mentioned that the water treatment facility project is currently the pueblo's second-highest priority project behind the Water Trust Board grant, which is currently estimated as a \$1 million project. The land for the Isleta Veterans Center was donated by one of the pueblo's members, and, although overall estimates for the entire project are still underway, an estimated \$188,000 in capital outlay funds has been allocated. A fire prevention strategy is also in its initial stages; an estimated 200 acres of land has been allotted for this project, which has the objective of improving the natural habitat to reduce wildfire hazards.

Committee members discussed the name change of the Hard Rock Hotel and Casino back to the original Isleta Resort and Casino.

Governor Torres informed the committee that the name change was in the best interests of the pueblo because the high franchise cost of operating as the Hard Rock Hotel and Casino, which was an estimated \$1 million per year, was resulting in revenue losses.

American Indian Education: Programs and Priorities

Rich Bland, senior director and policy/advocacy representative of Save The Children (STC), delivered an overview of three main areas of development: early childhood, literacy and students in high-risk or emergency situations. Partnering with the state, STC has fully committed to achieving cultural enhancement through cradleboard construction, hogan construction, sand art

fundamentals and the importance of feathers in Indian art, dreamcatcher construction and mask construction. Other activities include hiring local storytellers and incorporating local traditions into the curriculum. Mr. Bland also mentioned that a portion of the funding for books is dedicated specifically to culturally designed materials. Although funding is and always has been an issue, for every \$300,000 invested by the state, STC will match that amount through private or public contributions.

Tony Archuleta, principal of the San Diego Riverside Charter School of the Pueblo of Jemez, hailed STC for making tremendous strides in regard to student progression. He disclosed that STC is changing the lives of his students and that it "is making a big difference" in their academic performance. His students are performing at higher levels and feeling safer and happier in school.

Mr. Bland stated that the program was established within counties that are facing high poverty rates, isolation, high unemployment and a lack of community resources and that are receiving less per capita federal funding and private charitable funding than urban areas. Students are selected for the program based on transportation issues, being in families with limited formal education and other high-risk factors.

Committee members discussed the time and money that the state has invested in STC. Mr. Bland responded that an estimated 2,700 students have participated in the program and that he would provide the fiscal information at a later time. Mr. Archuleta intervened in regard to the question of program costs by stating that as principal of the San Diego Riverside Charter School, his operating budget for the STC program was an estimated \$1 million. A committee member then asked what percentage of the estimated \$1 million operating budget is allocated to salaries of STC staff. Mr. Archuleta answered that an estimated 80% of the budget is allocated to benefits and salaries of the staff. The committee member then stated that only 20% of the operating budget was left for individual students enrolled in the STC program. The committee member expressed surprise at the estimates, and further information was requested in regard to appropriations and financing of the program. The committee member mentioned that if an estimated 80% of the operating budget is being allocated to administration, the cost is rather high in comparison to funding being invested in students.

Committee members discussed a headline from a Gallup newspaper about how public schools within McKinley County went from "failing to failing" or received an F letter grade, according to the Public Education Department (PED). Committee members directed a series of questions toward Mr. Bland in regard to this poor academic performance, requesting information connecting STC and the Indian Education Act (IEA) and why these schools are performing at a failing level.

Mr. Bland's response was that only a very limited number of children can benefit from STC due to funding limitations and that the intention of the program is to benefit the entire school, although constraints on funding make that extremely difficult to achieve.

After a series of questions regarding McKinley County and its public schools, committee members demanded transparency and clarity. In addition, further information was requested from both the Indian Education Division (IED) of the PED and STC.

Representative Jeff asked if there were any members of the audience who represented the IED or the PED. There were not.

A committee member asked Mr. Bland how schools are selected to participate in STC. Mr. Bland responded that the IEA created the IED. Also, schools are selected to participate in STC based on the poorest children residing in the poorest counties being granted the highest priority. Committee members discussed the mechanism by which students are selected to participate in the program, asking whether it is based on recommendations or voluntary selection.

Mr. Archuleta stated that teacher referrals, in addition to the New Mexico-based assessment examination, are the factors that would determine a student's admission into the STC program. On the subject of standards-based examinations, committee members asked if standardized testing was an accurate tool to measure student success or potential or if other methods or tools are applied to measure student success more accurately. Committee members also raised the issue that Native American languages may cease to exist in 30 years and that this is one of the main issues facing the Native American community, not just within the state, but across the nation.

Mr. Bland's response to the committee on the issue of measuring student success was that, although controversial, the measurement was indeed based on standardized testing.

A committee member weighed in on student failure rates across the state, raising the issue that perhaps student performance is affected by contributing factors outside the classroom. In addition, Mr. Bland was asked how often tests are administered to students participating in STC. Mr. Bland's response was that students are tested at the beginning, middle and end of the program.

Committee members raised the issue of funding allocations. One member stated that the results of student performance do not justify the state allocating an estimated \$300,000 to STC. Mr. Bland replied that he could not accurately answer funding related questions.

Representative Madalena made a motion, seconded by Representative Lundstrom, that a letter be submitted to PED and IED staff asking them to make an effort to attend IAC hearings so that committee members may ask questions in regard to transparency and clarity of educational issues facing the Native American community. With no objections, the motion passed.

On the subject of student performance, committee members discussed Indian education as a "double-edged sword", noting that standardized testing is not an accurate tool of measurement due to Native American language barriers.

Mr. Bland replied that he agreed entirely that cultural and linguistic preservation is critical for any student's success, and he said that STC is working alongside the IED in regard to training programs in both of these areas.

Minutes

Representative Jeff introduced a motion, seconded by Representative Madalena, for the approval of the minutes of the previous IAC meeting. The motion carried with no objections.

An Overview of the Pueblo of Isleta's Involvement with the State Regarding Water and the Environment

Ramona M. Montoya, division manager of the Pueblo of Isleta Public Services Department's Environment Division and secretary of the Coalition of Six Middle Rio Grande Basin Pueblos, began her presentation by discussing the transportation corridors between the Pueblo of Isleta and the State of New Mexico. Major congestion has been negatively affecting the pueblo. Other issues of concern are the environment, the Gaming Palace and the exclusion of tribal lands from the state's water plan. Another area of concern is the number of regulatory incidents involving pollution, permits on air quality and landfill permits. Ms. Montoya stated that contact has been made between the pueblo and the Department of Environment. A hunter safety program and other training programs are being discussed.

On the issue of water, the Water Surface Act of 1993 is still in effect and is applicable to all surfaces or bodies of water within the reservation.

The Clean Water Act is still in effect, and the pueblo is working collaboratively with the Department of Transportation for storm water control infrastructure and transportation engineers to reduce congestion and to address other related issues. Another very important initiative being stressed by the pueblo is pollution control, including cooperating with state agencies to keep the Rio Grande clean.

Issues of Concern to the Middle Rio Grande Pueblos and How the State Legislature Can Help

Governor Torres spoke about issues of concern to the middle Rio Grande pueblos and how the legislature can help. Water management has become increasingly difficult due to global climate change affecting snowfall and spring runoff; drought; historic and current domestic, municipal and industrial ground water use; and the Endangered Species Act. Governor Torres asked for the state's support for pueblo efforts to develop and fund new approaches to maximize usable water supplies and to construct the infrastructure improvements necessary to use available water efficiently. The federal Pueblo Irrigation Infrastructure Improvement Act from 2008, which was established to survey the state of Indian irrigation infrastructure along the entire Rio Grande, authorized \$6 million per year for irrigation efficiency improvements through the end of the decade. Unfortunately, Congress has not appropriated any funds to support this important endeavor. Governor Torres asked for state support to secure federal funding to complete the survey.

Another key issue facing the Pueblo of Isleta is water storage. Storage restrictions imposed by the Rio Grande Compact are resulting in serious water supply issues. Currently, water is stored each spring in the El Vado Reservoir from the six pueblos under the terms of the 1981 storage agreement between the pueblos and the federal Bureau of Reclamation of the U.S. Department of the Interior.

At the conclusion of Governor Torres' testimony, one of the committee members asked if, according to the most recent United States Supreme Court ruling on the issue of water, the Office of the State Engineer reserves the right and authority to store and release water according to the capacity of the state's water supply. Governor Torres stated that the federal Bureau of Reclamation, not the Office of the State Engineer, reserves the right to store and release water to the various federally recognized Indian nations, tribes or pueblos.

Cross-Deputization/Dual Endorsement of Tribal Officers and Questions of Jurisdiction, Enforcement of Protective Orders and Full Faith and Credit: A Perspective from the Pueblo of Isleta

Kevin Mariano, chief of police, Pueblo of Isleta, presented testimony on the subject of cross-deputization and dual endorsements of tribal officers. He stated that the cross-jurisdictional border agreements between law enforcement agencies could be found in Section 29-1-11 NMSA 1978. The requirements of tribal police officers to qualify for cross-deputization are as follows:

- U.S. citizenship;
- a high school diploma (minimal requirement);
- a New Mexico driver's license;
- a clean record;
- passing a standardized examination; and
- proof of insurance by the Pueblo of Isleta.

Chief of Police Mariano was asked by committee members about cross-commissions. Are state law enforcement officers commissioned to enforce the laws on tribal lands and vice-versa? Chief Mariano stated that, due to jurisdiction and other factors, that is not the case.

Committee members discussed whether an American Indian who is in violation of state law and within the jurisdiction of the state forfeits rights as a Native American. In addition, does the pueblo reserve the right to convert criminal law into civil law for offenses committed within the boundaries of the reservation?

Governor Torres weighed in on the issue of public safety. In 2013, House Bill 306 (HB 306) was introduced to address cross-deputization, jurisdictional disputes and tribal sovereignty. HB 306 basically states that all tribal citations should be turned over to the State of New Mexico.

Brian Carr, captain of the Laguna Pueblo Police Department and former member of the Albuquerque Police Department, stated that cross-commissions create serious limitations for tribal officers enforcing the law on nontribal members. In many instances, tribal officers are denied assistance by both county and state officials when enforcing violations of tribal laws by nontribal members. This is a huge risk and area of concern because of the ongoing increase in criminal behavior on or near the various Indian pueblos, tribes and nations.

Committee members discussed the issue of sovereignty. Members expressed the following views:

- Every tribal government is its own nation and governs itself accordingly.
- State laws do not apply on tribal lands; they only apply on state lands or within state boundaries.
- Legislation intended to apply to or for two independent sovereign nations would result in a colossal failure and a series of immense and complicated lawsuits.
- Mutual respect and recognition between the state and tribal governments should exist.
- Sovereign states forcing laws on one another is not good legislation and is overall bad policy.
- There is no "one-size-fits-all" legislation, so the best solution is to work collaboratively to enforce the law.

Tammy Lambert, legal representative of the Pueblo of Isleta, was requested to make a presentation on the ongoing liability issue. The federal government is working alongside various tribal governments to achieve public safety. Through the Federal Tort Claims Act, tribal officers are covered and protected; however, intentional tort claims are not.

Representative Jeff requested that Governor Terry Aguilar of the Pueblo of San Ildefonso, who was in the audience, testify about ongoing issues. Governor Aguilar said that educating members of the legislature, judges and state and tribal officials on the subject of American Indian law is crucial for the future and for all entities to coexist. He further stated that judges at all levels have to understand the law in order to uphold it and to achieve the ultimate goal of public safety. Education reform is essential for the safety of police officers and should be the main concern.

Representative Jeff requested a memorandum of understanding among the various tribal governments in the state regarding the implication of the legal passage of these precedents. Her main concern was that because tribal governments are independent and sovereign entities, each would have its own views and opinions on this very controversial issue.

Tuesday, July 16

Invocation, Welcome and Status Update — Pueblo of Santa Ana

Representative Jeff reconvened the meeting, welcomed the committee and members of the audience and asked everyone to introduce themselves. Robert Ortiz, tribal planner, Pueblo of Santa Ana, delivered an invocation.

Gaining Recognition as a Tribe or Pueblo: Process and Challenges

Joel Davis, lobbyist, Fort Sill Apache Tribe, delivered a presentation on behalf of the Fort Sill Apache Tribe about Native American tribes gaining federal recognition. Although the Fort Sill Apache Tribe is primarily situated within Oklahoma, the tribe does have reservation land within New Mexico and Arizona. The issue is that the tribe was not invited to the annual State-Tribal Summit hosted by Governor Martinez.

After Mr. Davis's presentation, many committees members had questions in regard to the state's role in relation to the Fort Sill Apache Tribe. Mr. Davis urged state legislators to recognize the tribe as a tribal entity and to formally invite tribal members to the annual State-Tribal Summit.

A motion was introduced by Representative Powdrell-Culbert and seconded by Senator Martinez to submit a letter of recommendation to the executive branch to formally invite the Fort Sill Apache Tribe to the annual State-Tribal Summit.

Representative Rodella objected on the grounds that the letter of recommendation to the executive was in violation of the "separation of powers clause" of the Constitution of New Mexico. The motion for the letter of recommendation was eventually withdrawn.

Update on the 2013 State-Tribal Summit

Duane Duffy, deputy secretary of Indian affairs, and Autumn Monteau, general counsel, Indian Affairs Department (IAD), presented an update on the 2013 State-Tribal Summit. The priorities of the summit included the following: Indian education and health; water rights and natural resources; and infrastructure and economic development. The presentation went into great detail about the governor's accomplishments and commitments in regard to the summit's priority areas.

After the presentation, committee members stated that they were impressed with the accomplishments thus far and that they were anxious to see what would become of the governor's "very ambitious agenda". The committee requested that tribal leaders in the audience present their views and opinions. Overall, the message from the tribal leaders was unanimous: although the summit was very promising and ambitious, there had been no funding attached to any of the initiatives of the IAD. Tribal leaders viewed it as a formality as opposed to a reality and requested that the next summit be extended to a full-day session instead of a half-day session. They also expressed frustration over the lack of funding for any of these initiatives, saying that

they were tired of "broken promises" made to them by the state. As one of the committee members said, "Commitments without cash is counterfeit."

The committee asked its minority party members to contact the Office of the Governor and urge Governor Martinez to meet with tribal leaders across the state on a one-on-one basis.

The Process for Requesting Early Voting Sites in Indian Country and Involving Native American Youth as Poll Workers

Secretary of State Dianna J. Duran, accompanied by Bobbi Shearer, director of the Bureau of Elections, Office of the Secretary of State (SOS), discussed early voting and involving Native American youths as poll workers within Indian Country for the 2014 election year. There was an update on voting statutes, including: Section 1-2-7 NMSA 1978, qualification of precinct board members, presiding judges and minors; Section 1-4-25 NMSA 1978, cancellation of registration and determination of death; and Section 1-6-5.8 NMSA 1978, early voting and Native American early voting locations. Secretary Duran stated that a Native American liaison acting on behalf of the SOS would be traveling to and from Indian pueblos, tribes and nations to assist them through the election process. Due to budget constraints, the SOS can employ only one Native American liaison, Martin Aguilar.

Representative Madalena introduced a motion to ask the SOS to allow Mr. Aguilar to travel to more remote areas of the state where various Indian pueblos, tribes and nations are located to assist them during the election process. Representative Alcon seconded the motion, and it passed with an objection by Representative Bladonado.

Wednesday, July 17

Senator Pinto reconvened the meeting, welcomed the committee and members of the audience and asked everyone to introduce themselves. Sammy Garcia, lieutenant governor, Pueblo of Santo Domingo, delivered an invocation.

Outreach and Services for Native American Veterans

Timothy L. Hale, secretary of veterans' services, delivered a presentation on outreach and services for Native American veterans. Secretary Hale emphasized that bringing programs, services and benefits to veterans is crucial for "serving those who served". Some of the main areas of concern are health care, employment opportunities and burial services.

Members of the committee asked Secretary Hale if his department is responsible for providing special services for female veterans, more specifically Native American women who have served in the military. Issues raised included:

- The number of female military veterans will increase by an estimated 35%.
- The federal Department of Veterans Affairs is constructing women's clinics designed to accommodate female veterans' needs.

- Many female veterans are homeless and have children.
- The Henderson House is a nonprofit organization that constructs residential units for female veterans and their children. It is a leading care provider to them.
- Homelessness is a serious problem facing the veteran community, so conferences are scheduled to confront these issues, and organizations like the Henderson House provide real solutions to this very serious problem.

Albino Calebaza, a Native American military veteran, asked for legislation to provide adequate health care for Native American veterans and their families. In addition to health care coverage, a liaison is needed to facilitate any programs, services or benefits that may emerge as a result of the legislation. One of the main issues facing the Native American veteran community is transportation. In many cases, veterans are unable to redeem services and benefits because they cannot transport themselves to the locations where they can receive the services.

Secretary Hale and committee members acknowledged all of the issues facing Native American veterans. Secretary Hale said that a very important issue facing that community is receiving proper burial rights. Three national cemeteries have been established, and the Office of the Governor has endorsed an initiative to construct state-sponsored veteran cemeteries in more rural and remote areas across the state.

Santo Domingo Behavioral Health (SDBH) Veteran's Services

Joe Rosetta presented an update of SDBH Veteran's Services. Housing is the primary benefit currently being provided for 300 people on the reservation. Other issues include guidance and counseling for substance abuse and mental illness.

Harley Coriz, director of the Santo Domingo Senior Center, presented a status update. The state has met the transportation services requirement, but employment training is a huge challenge. Education and behavioral health care are other initiatives that are struggling because of inadequate funding.

Welcome and Status Update — Pueblo of Santo Domingo

Governor Felix Tenorio, Jr., presented a status update on the Pueblo of Santo Domingo. He opened his presentation with a special thanks and welcome to all in attendance. Some ongoing and completed projects at the pueblo include a health clinic, a public safety complex, trading posts, roads and infrastructure and an underground irrigation system. In regard to natural resources, planting of natural grasses and environmental development are currently ongoing, as is an initiative to produce healthier livestock.

After the governor's update, Eric F. Chavez, a former governor of the pueblo and current tribal council member, was also recognized. He stated that many of the pueblo's achievements are accomplished internally through the tribal government. However, a special thanks was owed to the state government for its partnership in making all of these programs and projects available.

The health facility was constructed with the intention of serving all people who may need it, not just tribal members.

Access to Health Care at the Pueblo of Santo Domingo

Mr. Anthony Yepa, health director of the Kewa Pueblo Health Clinic, delivered a presentation informing the committee that nearly 70% of Santo Domingo tribal members will be eligible for medical coverage through either Centennial Care or Medicaid expansion. New state-of-the-art health care facilities are either under construction or already completed. These new health care facilities include a dental clinic, a behavioral health clinic, a dialysis unit, an optometry unit and a pharmacy. Although these projects are helping the pueblo move toward progressive health care reform, Mr. Yepa informed the committee that these facilities are too small and need to be expanded. Members of the committee asked Mr. Yepa if tribes would be mandated to enroll in "Obamacare". Mr. Yepa informed the committee that since tribal members are protected by federal law, there is no mandate for them to enroll.

Tribal Infrastructure Project Fund at the Pueblo of Santo Domingo

Kenny Pin, planning director, Pueblo of Santa Domingo, presented information about ongoing construction and renovation projects at the pueblo.

The most recent Tribal Infrastructure Project Fund (TIPF) award to the pueblo was for a water and sewer treatment facility in the amount of \$300,000. In addition, there is the first phase of the Cedar Tree subdivision, a residential unit consisting of 10 homes. The Kewa Pueblo Safety Complex was constructed through capital outlay allocations, in addition to the Head Start Complex. A \$1 million water tank project used TIPF money to replace the pueblo's existing water tanks, which can only retain two-thirds of capacity without leaking. The final portion of Mr. Pin's presentation related to the community master plan and how the pueblo is going to resolve its social issues. Because the Pueblo of Santo Domingo is a non-gaming tribe, it has to find alternative sources of funding (i.e., from capital outlay funding and the TIPF). Photographs were also presented, showing the devastation to the pueblo from a fire in 2001.

Adjournment and Tour

Following adjournment of the meeting at 4:00 p.m., committee members took a tour of the Santo Domingo Early Childhood Center, the Santo Domingo Trading Post and the Kewa Pueblo Health Clinic.